

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
UNIVERSAL UTILITY CONTRACTORS,
INC.; LAND CONSTRUCTION CO.;
PACIFIC WRECKING CORP.; AND
CONNWILL, INC.,

Appellants,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 85-152

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER, the appeal of a Notice and Order of Civil Penalty of \$1,000 for unlawful burning (burning natural vegetation at a site other than where the vegetation was grown) came on for hearing before the Pollution Control Hearings Board at Seattle, Washington, on September 19, 1985. Seated for and as the Board were Lawrence J. Faulk (presiding) and Wick Dufford. Respondent Agency elected a formal hearing, pursuant to RCW 43.21B.230 and WAC 371-08-155. Kim L. Otis,

1 court reporter of Robert H. Lewis & Associates, officially reported
2 the proceedings.

3 Steve Legg, General Manager of Universal Utility Contractors,
4 appeared and represented the appellant. Respondent Agency was
5 represented by its legal counsel, Keith D. McGoffin.

6 Witnesses were sworn and testified. Exhibits were admitted and
7 examined. Argument was heard. From the testimony, evidence, and
8 contentions of the parties, the Board makes these

9 FINDINGS OF FACT

10 I

11 Respondent, Puget Sound Air Pollution Control Agency (PSAPCA),
12 pursuant to RCW 43.21B.260, has filed with the Board a certified copy
13 of its Regulations I and II and all amendments thereto. We take
14 official notice of those regulations.

15 II

16 On June 19, 1985, in the morning responding to a complaint two
17 firefighters from the Bothel Fire Department investigated an outdoor
18 fire on a land clearing site located on 234th Street SW, just west of
19 14th Avenue W., in Bothel, Snohomish County, Washington. The
20 firefighters drove to the land clearing site and found a sizeable
21 hotly burning pile of natural vegetation. While there they observed
22 a large semi truck loaded with stumps and branches back up to the burn
23 pile to unload its cargo. One of the firefighters told the truck
24 driver that he could not dump onto the burn pile. The truck driver
25 told firefighter Wright that, they were under contract with Land
26 Construction

1 Company, and had been hauling debris from Redmond to this site for the
2 last two or three weeks for burning. The truck then left without
3 dumping its load. A fire engine arrived and put out the fire. From
4 the appearance of the site, the firefighters concluded that burning
5 had been carried on there for a number of days.

6 III

7 PSAPCA was contacted, and on June 20, 1985, an agency inspector
8 went out to the scene. The inspector observed the partially burned
9 fire pile containing natural vegetation--approximately sixty feet in
10 diameter and twenty feet high. During the observation the inspector
11 took two photographs showing the contents of the fire.

12 IV

13 PSAPCA's files revealed that a Population Density Verification
14 (PDV) had been issued for the burn site to Universal Utility
15 Contractors Inc. The PDV, valid for one year, was issued on May 24,
16 1985.

17 Under PSAPCA's open burning program, land clearing burning, as
18 defined, may be conducted without further agency approval in areas
19 where the population is less than 2500 persons within .6 of a mile of
20 a proposed burn site. (Local fire authorities may, however, require
21 separate permits for fires in such areas.)

22 The PDV issued here verified that the population near the burn
23 site was below the 2500 figure. However, among its standard
24 conditions, the following was set forth:

25 The outdoor fires must not contain any material
26 other than the trees, stumps, shrubbery or other

natural vegetation which grew on the property being cleared. (emphasis added)

V.

Land clearing burning is defined in PSAPCA Regulation I, Section 1.07(y) as

Outdoor fires consisting of residue of a natural character such as trees, stumps, shrubbery and other natural vegetation arising from land clearing projects and burned on the lands on which the material originated. (emphasis added)

The burning in question was outside this definition. PSAPCA authorizes burning which is neither land clearing nor residential (homeowner's yard and gardening refuse) burning only by special permit. No such permit was obtained for the fire on June 19.

VI

On June 27, 1985, the inspector from PSAPCA made contact with Bonnie Bullatt, from Universal Utility and advised her of the situation. Ms. Bullatt indicated that she had obtained the PDV for Land Construction Company. The inspector then contacted Alfred "Buck" Zahnow of Land Construction and advised him that a Notice of Violation would be issued. Mr. Zahnow stated that Pacific Wrecking had been contracted to haul the debris from Redmond to the burn site. Subsequent investigation revealed that the land clearing site was owned by Connwill Inc.

VII

On July 5, 1985, the inspector mailed Notice of Violation No. 20899, citing an infraction of the Agency's Regulation I, Section 8.05 and for hauling natural vegetation to a site other than where it was

1 grown and burning it without a permit.

2 On July 31, 1985, respondent Agency issued a formal notice and
3 Order of Civil Penalty No. 6318 jointly to Land Construction Co.,
4 Universal Utility Contractors, Inc. Pacific Wrecking, and Connwill
5 Inc. dba Meadow Creek Park Assoc., assessing \$1,000 for the same
6 asserted violation. From this action, an appeal was filed with this
7 Board on August 12, 1985, on behalf of all the parties named.

8 VIII

9 Appellant Universal Utility Contractors Inc. had a previous
10 encounter with PSAPCA over alleged unlawful outdoor burning of
11 prohibited material in 1984. Appellant was issued a warning for that
12 violation, in the form of a letter from PSAPCA.

13 IX

14 Steve Legg spoke for all appellants. Universal Utility and Land
15 Construction, he advised, are sister corporations which concentrate on
16 different aspects of land development projects. Neither seeks to
17 shift responsibility to the other in this instance. Rather the
18 argument for all appellants was that for this recent incident the fine
19 is excessive. He said the superintendent was apparently unfamiliar
20 with the restrictions against hauling material into a site for
21 burning. He said Universal Utility and Land Construction are involved
22 in a great deal of land clearing and he feels the record over about
23 18 years of operation is good.

24 X

25 PSAPCA's chief enforcement officer testified that Universal

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-152

1 Utility and Land Construction over the years have obtained many
2 PDV's. He termed the hauling in of land clearing debris to a burn
3 pile, as here, the maintenance of a burning dump. He noted that
4 excerpts of the agency's relevant open burning regulations are
5 enclosed with each PDV mailed out of the office.

6 XI

7 Any Conclusion of Law which is deemed a Finding of Fact is hereby
8 adopted as such.

9 From these Findings of Fact, the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over these persons and these matters.
13 Chapters 43.21B and 70.94 RCW.

14 II

15 RCW 70.94.740 states, in pertinent part:

16 It is the policy of the state to achieve and
17 maintain high levels of air quality and to this end
18 to minimize to the greatest extent reasonably
19 possible the burning of outdoor fires. Consistent
20 with this policy, the legislature declares that
21 such fires should be allowed only on a limited
22 basis under strict regulation and close control.

23 III

24 Section 8.05 of Regulation I entitled "Other Burning"
25 states in pertinent part:

26 It shall be unlawful for any person to cause
27 or allow any outdoor fire other than land clearing
burning or residential burning except under the
following conditions:

(1) Prior written approval has been issued by
the Control Officer or Board; and

(2) Burning is conducted at such times and
under such conditions as may be established by the
Control Officer or Board.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-152

1 IV

2 We conclude that the outdoor fire occurring on June 19, 1985,
3 violated Section 8.05 of Regulation I. We conclude that all active
4 participants, Universal Utility Contractors, Land Construction Co. and
5 Pacific Wrecking, properly bear responsibility for the fire
6 containing natural vegetation hauled from another site and burned.
7 Connwill Inc. was also appropriately included in the joint penalty by
8 virtue of Section 8.04(b) of Regulation I.

9 VI

10 The Washington Clean Air Act, chapter 70.94 RCW, is a strict
11 liability statute. Explanations do not operate to excuse violations
12 of regulations adopted under its authority. Air contaminant sources
13 are required to conform to such regulations.

14 VII

15 RCW 70.94.431 provides for civil penalties for violation of
16 regulations adopted pursuant to the Act. In determining whether a
17 fine should be sustained against these appellants, the surrounding
18 facts and circumstances are relevant. Factors bearing on
19 reasonableness must be considered. These include:

- 20 (a) the nature of the violation;
21 (b) the prior behavior of the violator; and
22 (c) actions taken to solve the problem.

23 VIII

24 Appellants did cause or allow the unpermitted fire. It was no
25 accident; the violation was clear and obvious. It was carried on for

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-152

1 a considerable time. Appellant land developers have prior experience
2 with PSAPCA's Regulation I as it relates to outdoor burning and should
3 have known better.

4 IX

5 On the record before us, weighing all the facts and circumstances,
6 we conclude that the penalty assessed in this instance is appropriate.

7 X

8 Any Finding of Fact which is deemed a Conclusion of Law is hereby
9 adopted as such.

10 From these Conclusions of Law the Board enters this
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORDER


The Notice and Order of Civil Penalty (No. 6318)) is affirmed.

DONE this 21st day of October, 1985.

POLLUTION CONTROL HEARINGS BOARD

 10/21/85

LAWRENCE S. FAULK, Chairman

_____
WICK DUFFORD, Lawyer Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 85-152